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FISCAL IMPACT REPORT

ORIGINAL DATE 1/30/06
 LAST UPDATED 2/10/06 HB 326/HGUACS/aHAFC/aHFI#1

SPONSOR HGUAC

SHORT TITLE State Board of Finance & Treasurer Duties SB _____

ANALYST Schardin

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY06	FY07	FY08		
	195.3		Recurring	General Fund
	159.8		Recurring	Self-Earning Accounts
	264.0		Recurring	LGIP Participants

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY06	FY07	FY08	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		28.5	28.5	57.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates SB722.

Relates to SB84 and HB596.

SOURCES OF INFORMATION

LFC Files

Responses Received From

State Treasurer's Office (STO)

Department of Finance and Administration (DFA)

Attorney General (AGO)

SUMMARY

Synopsis of House Floor Amendment #1

The House Floor Amendment to the House Government and Urban Affairs Committee substitute for House Bill 326 strengthens BOF oversight over the STO by changing the word "may" to "shall" on page 3, line 14. As amended, the BOF will now be required, rather than allowed, to

adopt rules and regulations concerning procedures for investing and handling the treasurer's portfolio, relationships with the treasurer's investment advisors and broker/dealers, public disclosure of investments, and treasurer's internal reporting. The BOF will also be required, rather than allowed, to recommend statutory changes regarding public fund investment to the legislature, establish a STO whistleblower program, hire an independent auditor to perform a fiduciary audit of the STO, and instruct the BOF director to employ experts, auditors, accountants and attorneys as required.

Synopsis of HAFC Amendment

The House Appropriations and Finance Committee amendment to the House Government and Urban Affairs Committee substitute for House Bill 326 fixes technical errors contained in current statute, and amends the list of entities from which the state treasurer and STO employees are prohibited from soliciting, receiving or accepting campaign contributions or any other thing of value.

Synopsis of Original Bill

The House Government and Urban Affairs Substitute for House Bill 326 attempts to address concerns that the State Board of Finance (BOF) does not have adequate oversight authority over the State Treasurer's Office (STO).

Section 1 amends the powers and duties of the BOF. It would

- require that one of the governor's four appointed BOF members have at least three years of experience managing fixed-income or equity investments;
- *require* BOF to adopt rules and regulations concerning procedures for investing and handling the treasurer's portfolio, relationships with the treasurer's investment advisors and broker/dealers, public disclosure of investments, and treasurer's internal reporting;
- *require* BOF to recommend statutory changes regarding public fund investment to the legislature, establish a STO whistleblower program, hire an independent auditor to perform a fiduciary audit of the STO, and instruct the BOF director to employ experts, auditors, accountants and attorneys as required;
- give BOF general supervision over the "investing" of public funds. Currently, BOF only has general supervision over the "safekeeping" and "depositing" of public funds.

Section 2 establishes in statute the State Treasurer's Investment Committee (STIC), which is currently created in the STO investment policy. STIC will have five members: the treasurer, two members from the BOF, and one public member chosen by the treasurer and one chosen by the BOF. The public members must have at least 3 years of investment experience. Duties of the STIC will be to review investment policies and recommend modifications, advise the treasurer, identify potential violations, and periodically report to the BOF. STIC will also be able to appoint an advisory committee including representatives from state agencies and local entities that have funds deposited at the STO. STIC will be subject to the Open Meetings Act. STIC members will be reimbursed for attending meetings.

Section 3 amends Section 6-10-10 NMSA 1978 to

- allow the STO to accept U.S. agency obligations as collateral on repurchase agreements;
- allow the STO to enter tri-party repurchase agreements;
- restrict STO investments in mutual funds to shares of an open-ended diversified invest-

ment company that is registered with the SEC, complies with diversification, quality and maturity rules applicable to money market mutual funds, and assesses no fees pursuant to rule 12b-1 of the securities and exchange commission, no sales load on the purchase of shares, and no contingent deferred sales charge.

Section 4 will require that the short-term investment fund (normally referred to as the local government investment pool or LGIP) obtain and maintain a credit rating of “AA” or higher from a nationally recognized statistical rating organization. If the LGIP receives a rating lower than “AA,” the treasurer will be required to immediately submit a plan to the state board of finance to bring the rating back to “AA” or higher.

Section 5 amends the duties of the state treasurer to require the treasurer to comply with all directives, requirements and policies made by the BOF pursuant to the BOF’s authority granted by law.

Section 6 creates a new section dealing with campaign contributions, conflicts of interest and financial disclosure involving the state treasurer. The section would:

- require the treasurer or a candidate for treasurer to file a report with the BOF within 30 days of receiving campaign contributions of more than \$250 from the same contributor. The report would show the name, address, occupation and employer of the contributor, the date and value of the contribution, and whether or not the contributor or a member of the contributor's family/household performs or seeks to perform business with the STO;
- allow the BOF to prohibit the state treasurer from personally participating in a decision affecting a campaign contributor. If the treasurer is prohibited from participation, the treasurer will appoint one or more STO staff members who have no relationship with the contributor as a proxy to aid in making the decision;
- prohibit the treasurer or any STO employee from soliciting, receiving or accepting contributions or any other thing of value from a person who is a current contractor with the STO or a STO employee;
- require the treasurer and each STO employee designated to do so by the BOF to file an annual report with the BOF disclosing all personal, financial or business relationships with banks, financial institutions, financial advisers or persons who perform or seek to perform business with the STO.

The bill carries an emergency clause, so its provisions will become effective upon the governor’s signature.

FISCAL IMPLICATIONS

Amending statute to allow U.S. agency securities as repo collateral will increase return on term repos by 10 to 20 basis points and increase return on overnight repos by 2 to 4 basis points. This amendment will increase earnings by about \$547.5 thousand in FY07 (see table below).

Amending statute to allow tri-party repos will increase return on overnight repos by about 2.2 basis points. This amendment will increase revenue by about \$71.5 thousand in FY07.

These additional earnings will be distributed to the state general fund (\$195.3 thousand), self earning accounts (\$159.8 thousand), and LGIP participants (\$264.0 thousand).

A rating organization such as Standard and Poor’s will charge the State Treasurer’s Office an

advisor fee of about \$16 thousand per year to monitor the fund, plus a fee of 1/8 of one basis point (0.00125 percent) of the portfolio balance. Assuming an LGIP balance of \$1 billion, these fees will be about \$28.5 thousand per year. The bill contains no appropriation for this fee.

Fiscal Impact of Amending Repurchase Agreement Restrictions

(Dollars in Thousands)

	FY07
Allow federal agency obligations as repo collateral	
10 to 20 basis point increase on Term Repos (assume 15 bp)	\$ 450.0
2 to 4 basis point increase on Overnight Repos (assume 3 bp)	\$ 97.5
Allow tri-party repos	
2.2 basis point increase on Overnight Repos	\$ 71.5
TOTAL REVENUE	\$ 619.0
DISTRIBUTION OF REVENUE	
State General Fund	\$ 195.3
Self-Earning Accounts	\$ 159.8
LGIP	\$ 264.0

Assumptions: (based on Dec. 2005 consensus estimate)

55% of STO general fund goes to state general fund and 45% goes to self-earning accounts

Expected STO General Fund Overnight Repo Balance \$250,000

Expected STO General Fund Term Repo Balance \$150,000

Expected LGIP Overnight Repo Balance \$ 75,000

Expected LGIP Term Repo Balance \$150,000

SIGNIFICANT ISSUES

While the provisions in this bill will dramatically reduce opportunities for a corrupt treasurer to exploit his or her official office, the bill does not address opportunities for corruption in other areas of state government. The state's other elected officials, public investing agencies, cabinet departments, and the public regulation commission should arguably face the same checks and balances as the state treasurer's office. While these agencies are not all involved in the investment of public funds, they do have the power to influence financial outcomes in the state.

In the short period of this legislative session, it may be impossible to propose thoughtful reforms that encompass other branches of state government. Perhaps anticorruption measures for other areas of state government should be considered by the State Permanent Fund Task Force during the 2006 interim.

ADMINISTRATIVE IMPLICATIONS

DFA reports that increased oversight of the STO will require additional resources for the BOF. The provisions of the bill could require one additional FTE and occasional appropriations for the special audits and investigations provided in the bill.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

The House Government and Urban Affairs Committee Substitute for House Bill 326 duplicates Senate Bill 722. The bill also relates to Senate Bill 84 and House Bill 526. These bills contain many of the same amendments found in Sections 3 and 4 of this bill.

TECHNICAL ISSUES

DFA notes that on page 6, line 12, the bill refers to the “chair” of the board of finance. This reference should be amended to read “president,” since the BOF does not have a chair, but the governor is the board president.

On page 3, lines 22 and 23, the bill states that the BOF may establish standards for the compensation and regulation of investment advisors and broker dealers. It will be difficult for BOF to establish standards for compensation since broker dealer compensation is often built into the price paid for an investment. It may also be difficult for BOF to set standards for regulation since regulation of broker dealers and investment agents is the responsibility of the regulation and licensing department.

OTHER SUBSTANTIVE ISSUES

Because the bill affects the duties of a constitutional office, STO recommends that it be referred to the House Judiciary Committee.

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